



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

**[Docket Number USCG-2020-0518]**

**RIN 1625-AA08**

#### **Special Local Regulation; Cumberland River, Hendersonville, TN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is issuing a marine event permit for the Waddle & Reed Inc. Boat in Movie, and establishing a temporary special local regulation for navigable waters on the Cumberland River from mile marker (MM) 236.0 to MM 237.5. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created by the Boat in Movie night on August 22, 2020. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley.

**DATES:** This rule is effective without actual notice from 7:30 p.m. until 9:30 p.m. on August 22, 2020.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0518 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer First Class Nicholas Jones, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone 615-736-5421, email Nicholas.J.Jones@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the hazards associated with the Boat in Movie night, and the need to address public safety via the implementation of a special local regulation. It is impracticable to publish an NPRM because we must establish this special local regulation by August 22, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Boat in Movie night marine event will be a safety concern, and is establishing a special local regulation from mile marker (MM) 236.0 to 237.5 on the Cumberland River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters for the duration of the event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation from 7:30 p.m. until 9:30 p.m. on August 22, 2020. The special local regulation will cover all navigable waters between miles 236.0 to 237.5 on the Cumberland River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters for the duration of the event. No vessel or person will be permitted to enter the regulated zone without obtaining permission from the COTP or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,”

under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. This special local regulation restricts transit on a one and a half-mile segment of the Cumberland River for two hours on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this special local regulation so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request permission to enter the zone.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting two hours that will prohibit entry from mile 236.0 to 237.5 on the Cumberland River. It is categorically excluded from further review under paragraph L61 in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—REGATTAS AND MARINE PARDES**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T08-0518 to read as follows:

##### **§ 100.T08-0518 Special Local Regulation; Cumberland River, Hendersonville, TN**

(a) *Location.* The Cumberland River, miles 236.0 to 237.5.

(b) *Periods of enforcement.* This temporary special local regulation will be enforced from 7:30 p.m. until 9:30 p.m. on August 22, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated personnel. Moreover, persons or vessels desiring to enter into or pass through the zone must request permission from the COTP Sector Ohio Valley or a designated representative. They may be contacted on VHF-FM radio channel 16 or phone at 1-800-253-7465

(2) Persons and vessels permitted to deviate from the special local regulation requirements as well as enter the restricted area must transit at the slowest safe speed and comply with all lawful directions issued by the COTP Sector Ohio Valley or a designated representative.

(d) *Informational broadcasts.* The COTP Sector Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the special local regulation, as well as any changes in the dates and times of enforcement.

Dated: August 14, 2020

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A. M. Beach,  
Captain, U.S. Coast Guard,  
Captain of the Port Sector Ohio Valley

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